

Appl. No. 10/022,863  
Amdt. dated Nov. 25, 2003  
Reply to Office Action of Aug. 28, 2003

### **REMARKS/ARGUMENTS**

Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the foregoing amendments and the following remarks is respectfully requested.

#### **In the Specification**

The abstract has been amended to meet the word count limitation of 50 to 150 words. No new matter has been added.

#### **In the Claims**

Claims 1 - 21 are presented for the Examiner's consideration.

Claims 1, 18 and 21 have all been amended to include the limitation that the first fiber has an average denier of one (1) or less. This limitation finds support in the specification in the paragraph that spans pages 12 and 13, as well as Examples 1 and 2 on page 17.

Claim 1 has also been amended to include the limitation of claim 6. This limitation finds support in Examples 1 and 2 on page 17, as well as claim 6 as previously presented. Claim 6 has been cancelled and claim 7 has been amended to correct its dependency.

#### **Summary of the Invention**

This invention relates to a nonwoven surge material for personal care products which is made up of a homogeneous mixture of small and large denier fibers. The smaller or first denier fibers have an average denier of 1 or less and are at least 3 denier smaller than the larger or second denier fibers. The second denier fibers have an average denier between 4 and 15. The first denier fiber may be a bicomponent fiber which may be a sheath/core polyethylene/polypropylene bicomponent fiber. The second denier fiber may be made from a polyester. This material may provide a reduction in skin hydration values by at least 8 percent, as measured by the TransEpidermal Water Loss (TEWL) testing procedure. Additionally, such a material can have an intake rate of at least 12 cc/sec.

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## **Regarding Examiner's Rejections**

### **1. Rejection for anticipation by Pereira**

By way of the Office Action mailed August 28, 2003, Examiner Stephens rejected claims 1 – 5, 8, 9, and 13 – 17 under 35 U.S.C. § 102(b) as allegedly being anticipated by Pereira (U.S. Patent No. 6,087,551). This rejection is respectfully **traversed** to the extent that it may apply to the present claims.

Pereira teaches a homogeneous blend of high- and low-denier staple fibers where the low denier fibers have a denier of from about 2 to 4 and where the high denier fibers have a denier of from about 4 to 15 (column 2, lines 41-45). Additionally, Pereira teaches that the fibers of the nonwoven fabric are single-component staple fibers (column 2, lines 55-64).

In contrast, claim 1 of the present invention claims that the smaller / first denier fibers are bicomponent fibers that have a denier of 1 or less (see, paragraph spanning pages 12 and 13, and Examples 1 and 2 on page 17). Claims 2 – 5, 8, 9, and 13 – 17 are all dependent on claim 1 and thus contain all the limitations of claim 1.

Because Pereira fails to disclose each and every element of Applicants' claims as amended, Applicants respectfully submit that Pereira does not anticipate claims 1 – 5, 8, 9, and 13 – 17 in the sense of 35 U.S.C. §102(b) and the rejection should be withdrawn.

### **2. Rejection for anticipation by Gryskiewicz et al.**

By way of the Office Action mailed August 28, 2003, Examiner Stephens rejected claims 18 – 21 under 35 U.S.C. § 102(b) as allegedly being anticipated by Gryskiewicz et al. (U.S. Patent No. 5,913,851). This rejection is respectfully **traversed** to the extent that it may apply to the present claims.

Gryskiewicz teaches a acquisition/distribution material comprising a 100 gsm web formed of a homogeneous blend of 60 percent 3 denier polyethylene/polypropylene fibers and 40 percent 6 denier polyester fibers (column 11, lines 40-59).

In contrast, claims 18 and 21 of the present invention claim that the smaller / first denier fibers that have a denier of 1 or less (see, paragraph spanning pages 12 and 13 as well as Examples 1 and 2 on page 17). Claims 19 and 20 are dependent on claim 18 and thus contain all of the limitations of claim 18.

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Because Periera fails to disclose each and every element of Applicants' claims as amended, Applicants respectfully submit that Gryskiewicz does not anticipate claims 18 - 21 in the sense of 35 U.S.C. §102(b) and the rejection should be withdrawn.

### **3. Rejection for obviousness by Pereira in view of Zehner et al.**

By way of the Office Action mailed August 28, 2003, Examiner Stephens rejected claims 6 and 7 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Pereira (U.S. Patent No. 6,087,551) in view of Zehner et al. (U.S. Patent No. 5,366,453). This rejection is respectfully traversed to the extent that it may apply to the present claims.

The limitations of claim 6 have been incorporated into claim 1. Claim 7 depends directly on claim 1, which Applicants have discussed above. Claim 7 is similarly distinguishable from Pereira in view of Zehner. Therefore, Pereira is no longer an appropriate base reference for an obviousness rejection.

Thus, Applicants respectfully ask that the obviousness rejection of claims 6 and 7 under 35 U.S.C. § 103(a) be withdrawn.

### **4. Rejection for obviousness by Pereira in view of Zehner et al.**

By way of the Office Action mailed August 28, 2003, Examiner Stephens rejected claims 1 and 10 - 12 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over Gryskiewicz et al. (U.S. Patent No. 5,913,851). This rejection is respectfully traversed to the extent that it may apply to the present claims.

The Examiner acknowledges that Gryskiewicz does not teach a first denier fiber having an average denier of 2 or less. However, the Examiner contends that there is nothing in the present invention that shows that a denier of 2 or less is such a critical value or gives an unexpected result so to exclude the 3 denier fiber of Gryskiewicz.

The present invention currently claims that the first denier fiber has an average denier of 1 or less. A fiber having a denier of 1 or less is substantially different than a 3 denier fiber. The use of a 3 denier fiber versus a fiber with a denier of 1 or less is quite different. This is demonstrated in comparing the testing results of Example 1 and Control 2 on pages 17 - 19. Control 2 (see page 17, last paragraph) is almost identical to the material taught in column 11, lines 40 - 59 of

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Gryskiewicz. Example 1 (page 17, first paragraph) provides the best comparison to Control 1 as the only difference between the two materials is that the first denier fiber of Example 1 is a 0.9 denier polyethylene/polypropylene (PE/PP) sheath/core fiber and the corresponding smaller denier fiber of Control 2 is a 3 denier PE/PP sheath/core fiber.

As discussed on page 18 (lines 5 – 19), Example 1 had a much better balance of fluid intake and fluid handling than Control 2. Also, TEWL testing showed that Example 1 provided significantly better minimization of skin hydration than Control 2 (shown by a TEWL value for Example 1 that was 30% less than that of Control 2). Therefore, one skilled in the art would not find that the first denier fiber of the present invention would be obvious in view of the 3 denier fiber taught in Gryskiewicz.

Additionally, the Examiner contends that the absorbent capacity and the test and performance characteristics of claims 10 – 12 would also be obvious, based on the contention that the structure recited in Gryskiewicz is substantially identical to that of the claimed present invention.

As discussed above, the invention of claim 1 is not obvious in view of Gryskiewicz. Furthermore, the structure recited in Gryskiewicz is more substantially identical to the Control 2 material than it would be similar to the present invention of claim 1. As shown above, the comparison of the present invention (as embodied in Example 1) to Control 2 revealed significant differences in the absorbent capacity and test and performance characteristics (see, Table 1 and discussion on page 18). One skilled in the art would not find that the invention of claims 1 and 10 – 12 would be obvious in view of Gryskiewicz.

Therefore, Applicants respectfully ask that the obviousness rejection of claims 1 and 10 – 12 under 35 U.S.C. § 103(a) be withdrawn.

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For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

The undersigned may be reached at: (770) 587-8096.

Respectfully submitted,

FENWICK ET AL.

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#### CERTIFICATE OF FACSIMILE TRANSMISSION

I, Nathan Hendon, hereby certify that on November 25, 2003, this document is being sent by facsimile to the United States Patent and Trademark Office, Technology Center 3700, "Before Final" facsimile machine at 703-872-9302.

By: 

Nathan Hendon